

CRB COMPLAINT EVALUATION FORM

Case Number: 07-001

Complainant Name: Omar Brown

CASE SUMMARY

Date of Incident:

November 15, 2006

Date of Complaint filed with IA:

Via CRB Fax dated March 7, 2007

Date of Complaint filed with CRB:

March 7, 2007

Officer:

Sgt. Pablo Rodriguez

Remaining Allegation: Untruthfulness

This is a supplemental evaluation to the previous complain evaluations and activity reports found in this file. The ONLY pending allegation is "*untruthfulness*". This Complaint evaluation should be read in conjunction with the Activity Report memo to the CRB dated 3/24/09 which the CRB has reflected upon in the past and uploaded to the CRB website for its February 22, 2010 meeting.

Said Activity Report should be supplemented as follows:

1. Sgt. Rodriguez's Sworn Testimony during the Suppression Hearing in Omar Brown's Criminal Case;
2. Judge Audlin's Order Relative to the Suppression Hearing in Omar Brown's Criminal Case;
3. Complainant's Reply to Suppression Hearing's Testimony & Judge's Order; &
4. Notice Letters to Complainant, IA and Sgt. Rodriguez

At its January 25, 2010 meeting, the CRB has withdrawn its subpoena against Sgt. Rodriguez and decided to rely upon the above referenced sworn statement to render its recommendation on this one remaining allegation of "*untruthfulness*".

IA has not commenced an investigation into these allegations as Omar Brown's criminal case is still pending in the courts.

1

1 Mr. ROTOLO: That's all I have, Judge.

2 THE COURT: All right, the witness may step down.

3 Thank you, Detective.

4 Call your next witness please.

5 MR. MADRUGA: We would Call Pablo Rodriguez.

6 THE COURT: You were previously placed under oath,
7 correct?

8 THE WITNESS: Yes, sir.

9 THE COURT: Go ahead and take a seat on the witness
10 stand, please.

11 State your name and spell your last name for the
12 record, please.

13 THE WITNESS: Pablo Rodriguez, R-o-d-r-i-g-u-e-z.

14 SERGEANT PABLO RODRIGUEZ,
15 called as a witness on behalf of the State, having been first
16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MADRUGA:

19 Q Good afternoon, Sergeant.

20 A Good afternoon.

21 Q I want to turn your attention back to September
22 2nd, 2006. You were working with the Key West Police
23 Department at this time?

24 A Yes, sir.

25 Q And you were a detective?

1 A Yes, sir.

2 Q Now, you became involved in the investigation of
3 the robbery of the Beachcomber Jewelry store, correct?

4 A Yes, sir.

5 Q And what were your duties in relation to that
6 investigation?

7 A At one point I prepared a search warrant.

8 Q And were you obtaining information from various
9 detectives, investigators for that search warrant?

10 A Yes, sir.

11 Q And how was that being accomplished?

12 A I believe by phone.

13 Q So you would talk to Officer Neary?

14 A I believe so, yes.

15 Q Detective Lipinski?

16 A Yes.

17 Q Officer Zamora?

18 A Yes.

19 Q Guevremont?

20 A Yes, sir.

21 Q So you were becoming familiar with the things that
22 had occurred at Beachcombers, the things that were occurring
23 at 3636 Duck Avenue, and also the matters that were going on
24 at the police station where the witnesses were being
25 interviewed?

1 A Yes, sir.

2 Q Where were you physically located while this was
3 going on?

4 A Originally when the call came down, I believe I
5 responded to the scene. I was there for short period of time
6 and then headed over to the police station.

7 Q That's what you were tasked to do is to work on
8 this search warrant?

9 A Correct.

10 Q Okay. As the information came in and the fact that
11 Omar Brown was involved in this scenario, did you have any
12 prior knowledge of Omar Brown?

13 A Yes, I did.

14 Q Could you describe that for the Court?

15 A Sure. At the time I had been speaking with him on
16 the phone. Prior to that, I had had several, a lot of
17 encounters with him. I had taken him into custody, arrested
18 him in the past, and I had dealt with him in the street a
19 lot.

20 Q Okay. Now, when you say arrested him in the past,
21 what do you mean by having arrested him in the past?

22 A I know there's been some issues with this, and to
23 be specific, that I have placed cuffs on him, that I have
24 watched him while in custody and had encounters where he was
25 not free to go.

1 Q Okay. Now, technically did you ever literally
2 arrest him on a charge and do like an affidavit, saying
3 you're under arrest for crime A, B, or C?

4 A I cannot tell you that to be the fact, sir. I
5 have, as I explained before, I used to keep all my
6 affidavits, but I've had them all destroyed and I cannot say
7 that I did. I don't recall.

8 Q So when you used the word "arrested" in the
9 warrant, what connotation were you conveying by the use of
10 that term?

11 A Depriving him of his freedom, putting cuffs on him.

12 Q Do you have specific incidents like that that you
13 can describe to the Court?

14 A Yes.

15 Q That you recall?

16 A Yes.

17 Q Please describe those to the Court.

18 A I remember three incidents that I can attest to,
19 and that would be one time at Truman and Emma Street where
20 Mr. Brown was with his girlfriend in front of Key Plaza
21 apartments, and I did a drug investigation and took him into
22 custody.

23 I can attest to another time that he was -- there
24 was a BOLO out --

25 Q Now, that incident didn't result in any arrest?

1 A I don't recall what it turned out to. I believe
2 that I might have had to let him go because I didn't have
3 enough at the time.

4 Q Okay. The second incident?

5 A The second incident, I recall there was a BOLO out
6 for a burglary or something that had happened which there was
7 a picture of a Rolex that was put out, a description of a
8 Rolex watch, and I remember I located Mr. Brown at Petronia
9 and Thomas and I deprived him of his freedom at that point
10 for further investigation, and I believe I had to call out
11 detectives or something like that.

12 Q That was somebody else's case?

13 A Correct. It was someone else's case that evolved
14 from there. It wasn't my own. A third time that I can
15 recall was at the corner of Kennedy and North Roosevelt at
16 the gas station there, where Mr. Brown was in a brown van and
17 the driver was a gentleman, his name was Joseph Key, and they
18 were all very familiar with him. Mr. Brown, there was, and I
19 remember there was an investigation going on at that point of
20 where I cuffed him and took him into custody.

21 Q All right. So now while technically the word
22 "arrest" may not completely accurately describe those as not
23 being formal arrests, they were law-enforcement detentions
24 scenarios involving Mr. Brown?

25 A Correct. I was not the arresting officer, but I

1 was the, I arrested him.

2 Q Now, more importantly, have you also seen Mr. Brown
3 in non-police settings in the Key West area just as one
4 citizen coming in contact with another citizen, just walking
5 around?

6 A I've seen him, you know, in my line of work mostly
7 and then dealing with him during this period of robberies
8 that was going on, but that was by over the phone.

9 Q All right. Now, in the warrant you had discussed
10 certain clothing that you were familiar with as far as Mr.
11 Brown and as far as his descriptors. Were you aware of the
12 approximately height of Mr. Brown?

13 A Correct, yes, I am.

14 Q And that was about five eight?

15 A Yes, sir.

16 Q Now, the clothing in your previous contacts with
17 Mr. Brown, was there anything about the clothing description
18 that was given to you by officers that reminded you of Mr.
19 Brown, can you describe that for the Court?

20 A Yes. The turtlenecks, long-sleeved turtleneck
21 shirts, and the caps, knitted beany-type caps, or other kind
22 of caps as well, but mostly the beany caps.

23 Q Was this something that you had seen Mr. Brown
24 wearing on more than one occasion?

25 A Yes.

1 Q And that stuck out in your mind?

2 A Oh, yeah, it's not very common to see people in
3 turtlenecks in Key West.

4 Q When you were preparing this warrant, was there any
5 portion of this warrant as far as the information that you
6 had obtained that you altered from what other officers would
7 have told you?

8 A No.

9 Q Did you ever go out to 3636 Duck Avenue?

10 A Yes, sir, with --

11 Q When --

12 A -- with the warrant in hand.

13 Q At the --

14 A With the search warrant.

15 Q For the search?

16 A Correct, yes, sir.

17 Q So you were present while the search was going on?

18 A Yes, sir.

19 Q And was Crime Scene Inspector Guevremont also
20 present?

21 A Yes, sir.

22 Q Now, when you prepared the warrant, were there any
23 pictures that were provided with the warrant?

24 A Yes, sir, there was. If I can go back one second,
25 that I was present at the execution of the warrant, I cannot

1 tell you that I sat there and watched every aspect of the
2 search. I might have been outside while everybody was doing
3 their tasks, that sort of thing.

4 Q Right. When you prepared the search warrant, did
5 you attach photographs to it describing the property?

6 A I don't recall. There was, we had photographs that
7 I presented with the, with it, but I don't recall if they
8 were attached at the time.

9 Q When you described the property in the search
10 warrant, did you describe the property with its fences and
11 everything that was present as far as you were familiar with
12 it?

13 A Yes. I had pictures that were brought to me from
14 the scene, and I went over that specifically to be able to
15 write it in the search warrant.

16 Q Do you recall the photos that were provided to you?

17 A Yes, sir, I have seen them recently.

18 Q Okay.

19 A I also remember the location from when I went
20 there.

21 Q From when you went there?

22 A Right.

23 Q That day or on a previous occasion?

24 A Well, it was that evening. I remember the sun was
25 coming down and it was actually dark out or getting dark.

1 MR. MADRUGA: I don't have anything further, Your
2 Honor.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. ROTOLO:

6 Q Detective, I have to tell you, this is the first
7 time I heard a police officer refer to something short of an
8 actual arrest as an arrest. Do you remember us taking your
9 deposition on the 24th day of November, 2008?

10 A Yes, sir, I remember.

11 Q And do you remember being asked about whether or
12 not you had ever arrested Mr. Brown and --

13 A Correct.

14 Q -- what your response was on that day?

15 A Correct, and --

16 Q And you said you weren't sure, right?

17 A I remember that I said I wasn't sure and --

18 Q But now today you're sure that you did these things
19 that you're constituting as an arrest?

20 A Yes, sir. Since then I've had to review all of
21 this.

22 Q Okay. There's been, obviously been an issue with
23 the Civilian Review Board, et cetera?

24 A Correct.

25 Q You've been aware for a while that there was

1 allegations that you never arrested Mr. Brown?

2 A Yes.

3 Q And I'm wondering on these occasions that you
4 referred to today, did you write reports? Have you tried to
5 find those reports? Have you done nothing to corroborate
6 your statement that -- you've had a lot of time, right? The
7 Civilian Review Board thing's been going on for a while?

8 A Correct. I have to tell you that as far as I went,
9 it was last Friday I started looking and I really found a lot
10 of difficulty in trying to research the issue and, you know,
11 how to find it through CAD and all of that.

12 Q Well, if -- you talked about at least one occasion
13 where it seems like Mr. Brown was arrested and you were
14 there, but --

15 A Correct.

16 Q -- I've gotten all of Mr. Brown's, the witness
17 lists from Mr. Brown's cases from the clerk's office and
18 you're not on any of them.

19 A Would you like me to elaborate on that or explain?

20 Q Sure, absolutely. I was getting to a question
21 here.

22 A Okay. I have dealt with Mr. Brown for a very long
23 time. There was a period of time where, you know, he was
24 a -- where I worked, the area that I worked, he was a person
25 that I had to deal with constantly.

1 Q I'm not doubting that you've had contact with Mr.
2 Brown. I'd sort of like focus on, you know, the affidavit,
3 the application for the search warrant says that you've
4 arrested him in the past.

5 A Okay.

6 Q When we took your deposition, you said that you
7 hadn't. Today you said you had, but there's a whole
8 different definition of arrest than the normal one that
9 you're giving.

10 A Right. Well, what I'm trying to explain to you is
11 that if anybody needed to look for Mr. Brown, like Special
12 Operations Team, or if they would do a round-up or something
13 like that, it would, you know, it would be very likely that
14 they would come ask me to assist with that and I would be
15 doing that. Now, that paperwork that went along with that
16 arrest wouldn't, you know, necessarily reflect that I'm the
17 one that found him. I would find him and say, He's here, and
18 then we would go from there. And that's the best way I can
19 explain that.

20 Q But you described that being -- maybe I'm wrong
21 about this, but what I gathered you described at least one
22 incident here where you were present, Mr. Brown was arrested,
23 and yet there are no cases where you appear on the witness
24 list. Are you saying that's normal? It's been my experience
25 that police officers who are at a scene are generally

1 included in the witness list.

2 A It hasn't been my experience on every single
3 occasion, no, sir.

4 Q Okay. So you're saying that you've looked for
5 reports to substantiate your contacts with Mr. Brown and you
6 haven't been able to find any?

7 A Right, due to the fact that it was a long time ago
8 and due to the fact that the locations are very common, and
9 it was explained to me that the way that the system searches
10 it's not very easy to do that. That's what I have knowledge
11 of, sir.

12 Q In the application for search warrant you say that
13 there was a description of a cap with a short visor and that
14 through your contacts with Mr. Brown you knew that he wore
15 caps with short visors?

16 A Correct.

17 Q So taking it one thing at a time, through your
18 contacts with Mr. Brown you knew that he had a wore caps with
19 a short visor upon occasion --

20 A Yes, sir.

21 Q -- right? We've just about read every report,
22 talked to every witness, eyewitness who was involved, I'm not
23 finding any eyewitness telling any police officer during the
24 course of this investigation that the robber or that one of
25 the robbers was wearing a cap with a short visor. Do you

1 know where you got that from?

2 A I can tell you that I got it from whoever I spoke
3 with at the scene and that when I reviewed their reports,
4 there was different versions of what they wrote after, which
5 was they described it as a toboggan, they described it
6 flipped up, and a flipped up portion.

7 Q Who's telling you this?

8 A The officers on the scene, sir. Actually the
9 detectives or officers.

10 Q Didn't you talk to civilians at the scene as well,
11 right?

12 A I very little spoke to the people at the scene. I
13 was not in charge of the investigation and I had to go back
14 to the station. I don't recall why, but I went back to the
15 station fairly, a few minutes after I arrived there, sir.

16 Q So you're saying that whatever probable cause you
17 put into the affidavit, very little or none of it was derived
18 from your personal interviews with civilian witnesses?

19 A It was mostly --

20 Q The victims?

21 A Yeah, mostly from the people at the scene.

22 Q Okay.

23 A Or officers at the scene, I apologize.

24 Q Right, I understood that. Do you remember my
25 asking you about the peaked cap business when we took your

1 deposition?

2 A Say again, sir.

3 Q Do you remember my asking you about the peaked cap
4 or the cap with a brim when I took your deposition in this
5 case?

6 A Yes. I remember that at the time I hadn't gone
7 over it with the facts because I had not the case file
8 available to me. It had been a couple of years since the
9 case.

10 Q And also the turtleneck, do you remember your
11 response?

12 THE COURT: Page and line, please?

13 MR. ROTOLO: Page, starting at page 33 line 23,
14 going to page 34 line 3.

15 THE COURT: Thank you.

16 Q Do you want me to show it to you, or?

17 A I don't recall off the top of my head, sir.

18 Q Okay. Could your response have been: No kidding,
19 I wrote that in the warrant?

20 A If it's there, sir, I don't know.

21 Q Okay.

22 MR. ROTOLO: May I approach the witness, Your
23 Honor?

24 THE COURT: You may.

25 Q Just ignore the highlighting if you will. Starting

1 here, okay, line 23, and then through page 34 line 3. Do you
2 want to go ahead and read that?

3 A Would you like me to read it out loud.

4 Q If you like.

5 THE COURT: No, you don't have to read it out loud.
6 This is not in evidence yet.

7 Do you wish to submit this in evidence, Mr. Rotolo?

8 MR. ROTOLO: I just want to ask.

9 Q First of all ask the witness, do you recollect
10 those questions and answers?

11 A Sir, I haven't read this since --

12 Q I'm just asking if you recollect the questions and
13 answers now.

14 A No, not --

15 Q Now, that you've --

16 A -- all of them, sir.

17 Q -- refreshed?

18 A No, I haven't read it yet.

19 Q Okay. Please go ahead and read it.

20 A (Witness complying.)

21 Correct, sir.

22 Q So does that refresh your recollection as to --

23 A Yeah, I remember that -- maybe you threw me off
24 with that word "peaked" or "peaked."

25 Q Okay.

1 A I don't know what that word is.

2 Q Okay, but --

3 A I don't think I wrote that word like that.

4 Q -- your answer was: No kidding, I wrote that in
5 the warrant, correct, at that time?

6 A You know, it doesn't, like the word.

7 Q Well, I'm still curious, and maybe you can help us
8 out a little bit with all of this, get to the bottom of this
9 if you just tell me who you got the cap with the visor
10 information from.

11 A Sir, I cannot tell you that one hundred percent.
12 It was one of the, it was either Detective Lipinski or
13 Officer Neary or Sergeant Torres. I spoke, I believe I spoke
14 to all three of them, mostly to Sergeant Torres and Dianne
15 Lipinski at the scene.

16 Q So --

17 A So it could have been either one.

18 Q Is it possible that because -- and I'm not accusing
19 you of wrongdoing or anything, but because of the fact that
20 you knew Mr. Brown wore caps with visors, it sort of got you
21 mixed up in your mind and you ended up putting down that the
22 robber had a cap with a visor?

23 A No. There was two different, two different parts
24 when we were writing the warrant, and I, the first part I got
25 the information from, and then called the people that were at

1 the scene and see what we had there, and then I continued
2 with the, with the end part. The information that I got was
3 directly from the people there. And then what I know from
4 Mr. Brown, I know from Mr. Brown.

5 Q Okay, good. I'm just asking you, and I don't want
6 to beat this to death. You're not able to tell me where you
7 got the information that one of the robbers wore a cap with a
8 short visor?

9 A Yes, I can tell you that it was either Sergeant
10 Torres, Detective Lipinski, or Tom Neary, but I believe it
11 was either Sergeant Torres or Lipinski most likely because
12 they were the ones conducting the investigation.

13 Q Well, I wonder where they would have gotten that.
14 So you put in the application for the search warrant that you
15 had arrested Mr. Brown in the past. When we took your
16 deposition, you said maybe you hadn't arrested him. Now
17 today you hadn't arrested him in the sense that you put him
18 in jail for a crime but you arrested him in some other lesser
19 sense?

20 A Correct. It's been --

21 Q Temporary custody?

22 A It has become an issue and I've had to explain it
23 and deal with that, and that's the best way that I can
24 explain it to you. When it comes to, there's a mention made
25 about arrest affidavits or paperwork, and that's what I

1 believe I was trying to explain to you and that, during the
2 deposition, is that I cannot say that I've been, you know,
3 the arresting officer or arrested him in that form.

4 Q But what's changed to today that you come into
5 court and say that you've arrested him when you couldn't say
6 it during the deposition? What's changed in the interim?

7 A What I'm addressing to you, sir.

8 Q That being?

9 A The fact that if, you're asking me to explain to
10 you or to prove to you that --

11 Q No, what I'm --

12 A -- I was the arresting officer, I cannot.

13 Q Okay. My specific question is what has changed
14 since we took your deposition and you said that you maybe had
15 never arrested him and today when you come into court and say
16 yes, you've arrested and give this sort of, frankly, tortured
17 explanation of what an arrest consists of?

18 A I don't understand what you mean.

19 Q Has anything changed since then?

20 A I mean, it's three years, a couple years later, a
21 lot of things have changed.

22 Q It's not that much later since your deposition.

23 A Okay, sir. Change with what?

24 MR. ROTOLO: I don't have any further questions at
25 this point, Judge.

1 THE COURT: Mr. Wunsch?

2 CROSS-EXAMINATION

3 BY MR. WUNSCH:

4 Q I just have a couple points, Officer Rodriguez.

5 A Yes, sir.

6 Q You knew when you prepared this warrant, you knew
7 that the car had been returned, correct?

8 A I don't know, sir.

9 Q Well --

10 A I can tell you that I know that the car was
11 returned at one point, but at what point I found out that the
12 vehicle was returned I can't --

13 Q Okay. Wouldn't that be something important to put
14 in the warrant if the car had been returned, it was returned
15 early on?

16 A I don't know. I don't think so. I think the point
17 of what happened with the car was the reason why we were
18 there and I was explaining that. Whether the vehicle had
19 been returned or not, I don't know if I knew or if it really
20 mattered.

21 Q Okay. Also the gloves that turned out -- the
22 gloves, when you wrote the warrant, you knew the gloves
23 didn't particularly match any description of any gloves that
24 were used in the commission of the crime; is that fair to
25 say?

1 A I didn't know, sir. What I wrote is what I was
2 told, what the description was on the scene and what was at
3 the scene. I don't know what they're, they're -- I don't
4 know what was at scene. I don't believe that actually
5 anybody saw at the beginning any gloves. I remember that
6 there was some gloves that had disappeared and later on
7 reading in the report they're describing them as camouflaged.
8 But what I distinctly remember as the description of the
9 gloves at the scene, which was a fact, that they were blue
10 and then they explained something about gardening gloves and
11 then they gave me the word "textured," and that textured part
12 I wrote in because I remember thinking, you know, that's a
13 weird description of gloves. You know, usually you get
14 something like, let's say, leather or latex or knit or any
15 way you want to describe gloves, but textured gloves.

16 Q So that didn't particularly line up with the gloves
17 that disappeared from Duck Avenue? You don't know?

18 A I don't know.

19 Q If you don't know, you don't know.

20 A I don't know.

21 Q Okay. One second.

22 One of the things that went into the warrant was a
23 discussion of yet another car and that Keith Rendueles had
24 walked his dog around the car and located some marijuana --

25 A Yes, sir.

1 Q -- in the car? What was the significance of
2 putting that in the warrant?

3 A It's what they told me at the scene, sir. That's
4 what I put in the warrant.

5 Q Okay. And then are you aware that the hammer that,
6 you know, the probable cause affidavit for the warrant talks
7 about having perhaps been used; ultimately it was determined
8 it was not the hammer that was used. Is that something that
9 you know about?

10 A That it was not the hammer that was used.

11 Q Correct.

12 A No. What I'm aware of is that it matched.

13 Q At the time you wrote the warrant?

14 A Correct, correct.

15 Q But that was only after it was seized by Inspector
16 Guevremont?

17 A Correct.

18 Q Okay.

19 MR. WUNSCH: That's all I have.

20 THE COURT: Redirect?

21 MR. WUNSCH: I'm sorry, Judge, one second.

22 BY MR. WUNSCH:

23 Q There was -- Detective Rodriguez, there's no
24 allegation of any marijuana being found at the scene, that
25 anybody smelled liked marijuana that robbed the house,

1 nothing like -- I'm sorry, that robbed the jewelry store,
2 nothing like that, correct?

3 A Not that I recall, sir.

4 Q I'm just trying to get some relevance to the
5 marijuana mention.

6 A No, I believe that, I believe that just was from
7 the car, it was located in it.

8 Q But that was not the car that was originally
9 reported stolen, that wasn't the car?

10 A Afterwards it was I figured out that or from the
11 information that was given to me that the vehicle was not the
12 one used for that.

13 Q Well, that vehicle was taken to the station and
14 analyzed, correct?

15 A I don't recall sir.

16 Q But in any event, at the time you wrote the warrant
17 that car was never the car that supposedly was borrowed,
18 returned, stolen, not reported, reported? Different vehicle
19 completely, correct?

20 A I don't know. I believe, thinking back at that
21 time, that maybe it would have been the vehicle that was used
22 to go pick up another vehicle and maybe returned. I don't
23 know which way it was used. I cannot make that relationship
24 for you. What I can do is tell you that the officers that
25 were there gave me this information and I put it in the

1 search warrant and it was a place that one might have needed
2 to look.

3 Q Okay. Thank you.

4 THE COURT: Redirect?

5 MR. MADRUGA: I have nothing further.

6 THE COURT: Sergeant, you may step down.

7 MR. ROTOLO: Can I ask just one more question.

8 THE COURT: No, sir, we're done. You may step
9 down. Unless it's something crucial --

10 MR. ROTOLO: No.

11 THE COURT: -- Mr. Rotolo, you both had a pretty
12 good opportunity to cross.

13 You can step down, Sergeant.

14 Call your next witness, please.

15 MR. MADRUGA: We would call Don Guevremont, Your
16 Honor.

17 THE COURT: All right. Two more witnesses for the
18 State, is that correct?

19 MR. MADRUGA: We'll be done with Mr. Guevremont,
20 Your Honor.

21 THE COURT: Okay. I was looking at our next break
22 for the afternoon. Is everybody doing okay? Do you
23 want a break or do you want to keep going and get this
24 done?

25 MR. MADRUGA: I could use a minute to get water,

1 Judge.

2 THE COURT: Let's take a five-minute break and let
3 everybody stretch their legs.

4 (Recess taken.)

5 THE COURT: State have its next witness ready?

6 MR. MADRUGA: Yes, Your Honor.

7 THE COURT: This is Inspector, I'm not going to
8 pronounce your last name correctly and I apologize for
9 that.

10 MR. MADRUGA: It's Guevremont.

11 THE COURT: Guevremont. Come forward. Were you
12 previously sworn?

13 THE WITNESS: I was not.

14 THE COURT: Please raise your right hand to be
15 sworn.

16 INSPECTOR DONALD GUEVREMONT,
17 called as a witness on behalf of the State, having been first
18 duly sworn, was examined and testified as follows:

19 DIRECT EXAMINATION

20 THE COURT: State your name and spell your last
21 name for the record, please.

22 THE WITNESS: My name is Donald Guevremont,
23 G-u-e-v-r-e-m-o-n-t.

24 BY MR. MADRUGA:

25 Q Good afternoon, Inspector. I appreciate your

2

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO: 2006-CF-1071-A-B-K

STATE OF FLORIDA,

Plaintiff

Vs.

(A) OMAR RICARDO BROWN and
(B) LAQUENTON CADE,

Defendants

FILED FOR RECORD
2010 JAN 19 PM 3:49
CLERK
DANIEL J. ROBERTS, CL.
CLERK OF COURT
MONROE COUNTY, FL.

ORDER DENYING MOTION TO SUPPRESS

THIS MATTER came on to be heard upon Defendant OMAR BROWN and Defendant LAQUENTON CADE's Motion to Suppress Evidence, and the Court, having conducted a full evidentiary hearing on December 1, 2009, having considered the testimony of the witnesses and having assigned such weight as is appropriate to the testimony, having considered and evaluated the credibility of the witnesses, as well as the tangible evidence produced at the hearing, and further having considered the argument of counsel, including written memoranda and written closing arguments, the Court hereby finds and Orders as follows:

1. On September 2, 2006, Beachcomber Jewelers in Key West was robbed at gunpoint by two individuals, and the robbery was reported at 12:15 p.m., that date. A description of the robbers was obtained from employees by police. At approximately the same time, Defendant

OMAR BROWN'S former girlfriend, **Maria Terrell** reported to the **Key West Police** that **BROWN** had taken her car without permission, reporting the car as stolen. The description of the car owned by **Terrell** matched the description of the car used by the armed robbers, i.e., a white 4-door motor vehicle with heavily tinted windows.

2. Shortly thereafter, **Terrell** called the police department to report that the car had been "returned". However, at the same time **Terrell** was retracting her report of a stolen car, **Key West** police officers were proceeding to Defendant **BROWN'S** residence at **3636 Duck Avenue**, **Key West, Florida**. The residence was surrounded by a wooden picket fence which bore "No Trespassing" signs. The police officers entered through two gates which were open, walked through the yard and to the primary entrance to the house, which was on the side of the house, and during this process they saw a pair of gloves and a hammer which were in plain view and which were thought to be connected to the robbery. (A black .380 semi-automatic Baretta firearm was later found in a shed behind the house under a pile of tires, after a search warrant had been obtained for the search of the property.) The officers knocked on the door and engaged in colloquy with the occupants of the house, including **OMAR BROWN** and two other individuals. All three subjects left the house and were not allowed to re-enter while police sought issuance of a search warrant. A warrant was issued by this Court and a search of the

house commenced which produced the aforementioned firearm, which was found in the shed, as well as dozens of items of jewelry, bearing price tags, which matched the jewelry stolen from Beachcomber Jewelers.

3. Defendants seek to suppress the fruits of the search, alleging that certain statements in the search warrant affidavit were either intentionally false or recklessly made, which would thereby require suppression of the evidence obtained in the search.
4. The purportedly false or erroneous statements include (1) an allegation that the affiant had previously arrested Defendant BROWN, (2) an allegation that one of the robbers wore a dark colored knit hat with a short visor and that BROWN often wears turtlenecks and a distinctive knit cap with a short visor, (3) an allegation that one assailant wore blue gloves described as textured, and that (4) at least one of the robbers was allegedly African-American. Defendants further assert that the failure of the affidavit to disclose to the Court that Maria Terrell's vehicle had been returned to her is a further deficiency.
5. The affiant's assertion in the affidavit that he had previously "arrested" Defendant OMAR BROWN, does not necessarily demonstrate either an affirmative deception or a reckless statement to the Court, and was not necessary for the issuance of the warrant. In testimony taken at the motion to suppress hearing, it became obvious to the Court that the

point the affiant was attempting to make in the affidavit was that he was personally familiar with Defendant OMAR BROWN and had encountered him on previous occasions in the context of street law enforcement. Whether or not the affiant had formally arrested OMAR BROWN is simply irrelevant to the point, which is that the affiant was personally familiar with Defendant OMAR BROWN.

6. Similarly, the variance between the affidavit and some, but not all of the witness statements and evidence relied upon by the police in preparation of the affidavit, and the testimony taken in open court, does not necessarily lead to the conclusion that the affidavit was either false or recklessly prepared. After deletion of facts set forth in the affidavit regarding the race of certain robbery suspects and certain details of their clothing that are erroneous or arguably incorrect, the factual allegations of the affidavit are still sufficient to establish probable cause and are therefore legally sufficient to support the warrant. Moreover, if the affidavit had included the fact that after the robbery had been completed, Marla Terrell had called the police to report the return of her vehicle (which matched the vehicle used in the robbery), there would still have been a legally sufficient basis for the warrant. See Terry v. State, 668 So.2d 954 (Fla. 1996); Pagan v. State, 830 So.2d 792 (Fla. 2002); State v. Knapp, 294 So.2d 338 (Fla. 2nd DCA 1974); Stipp v. State, 355 So.2d 1217 (Fla. 4th DCA 1978).

7. Finally, Defendants assert that the search warrant contained information unlawfully obtained because of a purported unlawful entry of the property located at 3636 Duck Avenue. As set forth above, the Key West police officers entered the curtilage of the property at 3636 Duck Avenue to complete an investigation regarding a complaint of a stolen car, and to conduct an interview with the person reported as having stolen the car. Based upon the testimony presented to the Court, and having weighed and evaluated the credibility of the witnesses and the strength of the testimony, the Court finds that the officers entered the property in good faith to complete the pending investigation. While lawfully on the premises, the officers observed what appeared to be evidence of criminal activity (hammer and gloves believed to have been used in the burglary) in plain view. While the officers were talking with the occupant of the house, the gloves they had seen in the yard disappeared, i.e., were removed and hidden by some unknown person. The officers then properly secured the premises until a search warrant was obtained from the Court. See Oliver v. United States, 466 U.S. 170 (1984), United States v. Santana, 427 U.S. 38 (1976), Wysong v. State, 614 So.2d 670 (Fla. 4th DCA 1993), and State v. Jardines, 9 So. 3rd 1 (Fla. 3rd DCA 2008) (relying on Potts v. Johnson, 654 So.2d 596 (Fla. 3rd DCA 1995), "a police officer in the scope of his duties

may approach a suspect's front door and knock in an attempt to talk to that suspect."

8. In this case, the officers entered the yard through open and unlocked gates and knocked on the residence door in order to talk to a person who had been reported as stealing a car.
9. Upon consideration of all the facts and circumstances and the controlling case authority, this Court finds that there is no constitutional violation and the Motion to Suppress is hereby DENIED.

DONE and ORDERED at Key West, Monroe County, Florida, this 19th day of January, 2010.



DAVID J. AUDLIN, JR.
CIRCUIT JUDGE

cc: State Attorney
Public Defender
Richard Wunsch, Esq.

3

CAROL BROWN CRB File NO: 07-001

"It's a cover up thing"

1-25-10

HAY WHAT'S UP I'm just writing to see what's the up date AND WHAT WAS JUDGE AUDIN Ruling of the ISSUE BETWEEN THE C.R.B CITIZEN REVIEW board AND THE P.B.A POLICE BENEVOLENT ASSOCIATION ON it's SUBPOENA POWER, WELL ON MY ISSUE YALL SEEN WHAT HAPPEND THE JUDGE STRIGHT OUT IS LYING ON HIS Ruling YOU CAN EVEN ASK MY ATTORNEY HE'S TRYING TO COVER UP FOR PABLO RODRIGUEZ AND THE KEYWEST POLICE, THE ISSUE ABOUT SO WHAT PABLO RODRIGUEZ NEVER ARRESTED MR. BROWN HE IS FAMILIAR WITH BROWN THAT'S A LIE, RODRIGUEZ WANT THAT HE IS FAMILIAR WITH HOW I LIVE, ALL THE JUDGE HAVE TO DO IS LOOK AT MY PHOTO ALBUM THAT THE POLICE HAVE AT THE POLICE THAT THEY SIZED OUT OF MY HOUSE WHEN THEY SERVED THE WARRANT IT'S IN EVIDENCE AT THE PROPERTY ROOM AT THE KEYWEST P.D STATION THAT WOULD CLAIR THAT UP AND ABOUT HIM SAYING THAT HE WAS PRESENT WHEN OTHER OFFICERS HAD ARRESTED ME, SEEN'S 2000 TO 2006 I'VE ONLY BEEN ARRESTED 3 TIME BY KEYWEST COPS AND YALL PROVE THAT ISSUE ABOUT HIM LYING, ALL SO ABOUT THE JUDGE COVER UP IN HIS Ruling HE IS SAYING AND NOW HAVE THE TOWN THINKING A CALL WAS MADE FROM MY HOUSE 3656 DUCKAN THAT MIRIA TERRELL MADE THE CALL FROM THERE SO THE POLICE HAD THE RIGHT TO GO THERE TO INTERVIEW MIRIA TERRELL ABOUT SOMEONE STEALING HER CAR, THE JUDGE KNOW THAT HE WAS LYING ON HIS Ruling CAUSE AT MY SUPPRESSING HEARING IT WAS PROVEN THAT OFFICER MANICA DIAZ REC'D THE CAR AND RESPOND TO MR'S TERRELL PLACE OF WORK THAT WAS AT LAS SALINAS AND SHE STATED ON THE STAND THAT SHE TOLD THE OTHER POLICE BEFORE THEY CAME TO MY HOUSE THAT THE CAR WAS RETURNED ALL THIS WAS PROVEN AT THE HEARING SO THE JUDGE KNOWED HE HEARD EVERYTHING IT'S A PLAIN FACT IN HIS Ruling HE'S LYING TO COVER UP THE POLICE AND THE STATE FOR HAVING ME IN JAIL THIS LONG WITH OUT PROBABLE CAUSE, EVERY BODY

ORRAN BROWN CRJ File No: 07-001

1-25-10

Know that the Key West Police had falsified a search warrant affidavit and conducted an illegal search of my home, now but last but I ease on the judge ruling he lying about a witness discrib miss terrell car as being a illegal getaway vehicle in the robbery that is saying that was never heard of until the judge ruling, it is not hard to see a thing can cover up for one and another, I know you about do criminal complaints, but I hope that you could give me a adress or somebody that could check in to what I'm talking about cause with the Police lying the State lying and now the judge lying there is know way I could get a fair trial it's a fact now if you could help me in my matter please let me know and get facts with me on how issue works and yall's thanks for your time and have a nice day!?

Respectfully

Orran Brown

4



CITY OF KEY WEST
Citizen Review Board
PO Box 1946
Key West, FL 33041
(305) 809-3887

January 28, 2010

Omar Brown #425744
Monroe County Detention Center
5501 College Road
Key West, FL 33040

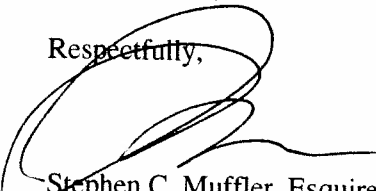
CRB Complaint File No.: 07-001

Dear Mr. Brown:

Enclosed please find a copy of the transcript of your suppression hearing (Sgt. Rodriguez's testimony only). Please also find enclosed a copy of Judge Audlin's ruling in your suppression case. In light of these items, please find enclosed a copy of the CRB's notice of withdrawal of its subpoena against Sgt. Rodriguez. The CRB will reflect upon these items, in addition to the other items in your CRB complaint file during its next meeting to discuss and finalize its recommendations in your file. This meeting will occur on February 22, 2010, and you and/or your representative are welcome to attend. It will be held at Old City Hall, 510 Greene Street, Key West Florida 33040 at 6:00 p.m.

If you cannot attend this meeting due to your incarceration, then please feel free to write back a response or comment letter addressing the enclosed items to this office. I will then enclose that written response for the Board's review. However, if you do intend to write back such a responsive letter, said item must be received by this office no later than Tuesday February 16, 2010 to make the deadline for the processing of your file.

Respectfully,



Stephen C. Muffler, Esquire
Attorney at Law
Executive Director



Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Lt. David Smith
FROM: Stephen Muffler, Esquire
DATE: 1/28/10
RE: CRB Agenda for 2/28/09

The CRB Agenda for the February 22, 2010 meeting has not been finalized as of this date. However, the CRB File #07-001 (Omar Brown) will be before the Board for their review at that meeting. Enclosed please find the respondent officers' notice. **Would you please forward these notice to the individual officer so that he is aware of this upcoming meeting?** It would be desirable for a representative from your office attend this meeting to help address the Board's specific questions on any files or procedures. Please note that all of the Board materials are now available for yourself or the respondent officers to view on the CRB website before the meeting.

**PLEASE ARRANGE FOR THE AVAILABILITY OF THE SUBJECT
RESPONDENT OFFICERS' PRIOR DISCIPLINARY HISTORY AND
COMMENDATIONS (LIST OF THEM BY SOME KIND OF SUMMARY PER
THE KWPD & IA WORKING AGREEMENT) AT THIS CRB MEETING.
THANKS.**

Citizens Review Board

From: Citizens Review Board
Sent: Thursday, January 28, 2010 1:59 PM
To: Pablo Rodriguez
Cc: Citizens Review Board; David T. Smith; Randall Smith
Subject: CRB Notice

Attachments: RodriguezNotice022210.PDF



RodriguezNotice022
210.PDF (23 ...

Attached please find your notice of the Next CRB Meeting on February 22, 2010 in which the CRB will be discussing CRB File #0-07-001 (Omar Brown). If you have any questions, please feel free to contact me directly.

Stephen C. Muffler, Esquire
Executive Director
Attorney at Law

City of Key West
Citizen Review Board
P.O. Box 1946
Key West, Florida 33041
tel(305) 809-3887
fax(305) 293-9827
crb@keywestcity.com
www.keywestcity.com

Note To Recipients: Under Florida law, this communication and any response or reply to it, will be subject to public records requests/disclosure laws, unless an applicable privilege or rule of evidence applies.

Note to Citizen Review Board Members: In accordance with the Florida Sunshine Law, please do not "reply to all" if there are other board members receiving this e-mail concerning Board business. Please only reply to non-board members when responding.



Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Sgt. Pablo Rodriguez
FROM: Stephen Muffler, Esquire
DATE: 1/28/10
RE: CRB Complaint #07-001/Brown

One or more of the Board Members and/or the Executive Director as placed the above referenced file on the Agenda for discussion at the CRB meeting to be held at 6:00 p.m. at Old City Hall on February 22, 2010. You are a respondent in this file and are invited to attend this meeting to help clarify the matter to the Board members. You are under no obligation to attend nor speak to the Board, but your input on the matter would be carefully weighed and would assist the Board in reaching a fair and just recommendation. You may attend personally, via a union representative or through legal counsel. The documents that will be reviewed by the Board will be uploaded to the CRB website for public viewing before the meeting.



Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Lt. David Smith
FROM: Stephen Muffler, Esquire
DATE: 2/3/10
RE: CRB Agenda for 2/22/10

Attached please find the CRB Agenda for February 22, 2010 meeting. Enclosed please find the respective officer's notices for this meeting. Would you please forward these notices to the individual officers so that they are aware of this upcoming meeting? It would be desirable for a representative from your office attend this meeting to help address the Board's specific questions on any files or procedures. Please note that all of the Board's materials are now available for yourself or the respondent officers to view via the CRB website before the meeting. **PLEASE ARRANGE FOR THE AVAILABILITY OF THE SUBJECT OFFICERS' PRIOR DISCIPLINARY HISTORY AND COMMENDATIONS (LIST OF THEM BY SOME KIND OF SUMMARY PER THE KWPD & CRB WORKING AGREEMENT) AT THIS CRB MEETING. THANKS.**

AGENDA

Citizen Review Board Meeting
Old City Hall, 510 Greene Street
Monday, February 22, 2010
6:00 p.m.

1. CALL THE MEETING TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF MINUTES:
 - a. January 25, 2010
5. TRACKING CHART REVIEW
6. CONTINUED OR NEW BUSINESS
 - a. File Review: **CRB #09-008** (_____) (Name Disclosure Pending Return of File from IA to CRB)
 - b. File Review: **CRB #07-001** (Omar Brown)
8. COUNSEL'S REPORT
- 9 CHAIRPERSON'S REPORT
10. BOARD MEMBERS REPORT/GENERAL COMMENTS
11. EXECUTIVE DIRECTOR'S REPORT
- 12 PSO/IA COMMENTS/FOLLOW-UP
- 13 PUBLIC INPUT
- 14 MEDIA AND PRESS QUESTIONS
- 15 ADJOURNMENT



Citizen Review Board
City of Key West Florida
Executive Director's Memo

TO: Sgt. Pablo Rodriguez
FROM: Stephen Muffler, Esquire
DATE: 1/28/10
RE: CRB Complaint #07-001/Brown

One or more of the Board Members and/or the Executive Director as placed the above referenced file on the Agenda for discussion at the CRB meeting to be held at 6:00 p.m. at Old City Hall on February 22, 2010. You are a respondent in this file and are invited to attend this meeting to help clarify the matter to the Board members. You are under no obligation to attend nor speak to the Board, but your input on the matter would be carefully weighed and would assist the Board in reaching a fair and just recommendation. You may attend personally, via a union representative or through legal counsel. The documents that will be reviewed by the Board will be uploaded to the CRB website for public viewing before the meeting.